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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,095

12/30/2005

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/07/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/540,095	<b>Applicant(s)</b> HALL, SIMON REGINALD	
	<b>Examiner</b> C. SAYALA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/20/2005</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claim 9 indicates that this claim is drawn to a product and yet, it does not recite any elements that relate to the product, reciting instead a method that includes steps such as "providing" a composition to an animal, "allowing" it to eat and "determining" its diet. There is no correlation between the product and the method. For examination purposes, this claim has been treated as a product, even though there are no elements that are related to the product, i.e. no components that describe this product. Note that this is not a product-by-process either, because there are no process of making steps.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foreman et al. (US Pub. 2001/0048955) taken with Jewell et al. (US Patent 6410063), WO 01/97605 and WO 01/97630 in view of Rice ("The Dog Handbook", pages 48-49, published by Barron's Educational Series, 1999), Romsos et al. (JAVMA, vol. 182(1), pp. 41-43, 1983) and further in view of Serpell ("The domestic dog", published by Cambridge University Press, pages 104-106, 1995) and Wills, Josephine ("Adult Maintenance", BSAVA Manual of Companion Animal Nutrition & Feeding Chapter 3; British Small Animal Veterinary Association 1996, pgs 44-46).

Foreman et al. teach offering a variety of foods to pets and teach a nutrient composition of protein 5-60%, fat 1-50% and carbohydrate or fiber of 1-60%. See paragraph [0032]. At col. 2, lines 23+, Jewell et al. teach a diet that contains 0-about20% carbohydrate, 25-70% protein and 20-70% fat. Both the WO patents claim a diet for a pet that contains 20-70% fat. These patents teach the step of "providing" such a diet to the pet which inherently includes allowing it to eat. The reference of Foreman and the WO patents teach more than a single type of foodstuff being offered, thus meeting claim 10. The patents do not teach determining the optimum diet content from the diet consumed.

The reference of Rice shows that "free-choice" feeding of dogs was a known method of feeding dogs to prevent obesity and overeating. At page 104 of the Serpell reference, the author shows that when a dog is offered a choice between two equally nutritious diets, it will invariably choose one over the other, probably depending on its

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sensory response to taste and odour, thus showing a food preference of one over the other.

Additionally, in this regard, Rosmos et al. disclose that animals such as rats and dogs are able to self-select the diet and are able to regulate their protein and energy intake by self-selection when allowed free-choice feeding. The dogs under this study were able to regulate their protein intake and establish a pattern in a week of the study. Therefore, if the food containing the carbohydrate, fat and protein contents as shown by the primary references were to be offered in a free-choice feeding method so that the dogs are able to self-regulate not just the protein content but also the fat and carbohydrate content, then it can be reasonably expected that they would have developed a pattern with these macronutrients too, not just protein and regulate their macronutrient content with respect to carbohydrate and fat also.

The reference of Wills teaches that cats often detect nutritional deficiencies in their diets and have the ability to reject such diets, thus showing that animals opt for diets that complete in the nutrients they need and would have been capable of self-regulating their diets based on nutrient content. The reference also states that dogs are able to become accustomed to meal times and places where they eat. Therefore, although the reference does not call this a "learning phase", it does establish that dogs are a quick study or animals of habit, and learn fast enough about meals and places and this fact taken with the disclosure of Rosmos which describes that the dogs established a pattern within a week with regard to regulating their protein intake, one of

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ordinary skill in the art would have reasonably expected such a pattern to be established in feeding the diets of the primary references as well, thus meeting claim 4.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1794**

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